STATEMENT OF BASIS

Permit Number: SDG070000

Permit Type: General permit to discharge under the South Dakota Surface Water Discharge System for temporary discharge activities in South Dakota

PERMIT DESCRIPTION

This general permit contains discharge requirements and limits that are based on technology and water quality considerations, prohibitions, Best Management Practices (BMPs), and other conditions applicable to the types of wastewater generated by temporary activities.

BACKGROUND

Various activities often result in temporary discharges to waters of the state. If these discharges are point sources, then they are subject to the requirements of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Chapters 74:52:01 through 74:52:11. Due to the nature of the scheduling of temporary activities, however, obtaining an individual Surface Water Discharge (SWD) permit may significantly impact the timing of a project due to administrative delays. The intent of a general permit for temporary discharges is to:

1. Facilitate the scheduling of these activities by reducing the administrative delays in their authorization;
2. Establish uniform criteria for management practices and effluent limits for discharges from these activities; and,
3. Promote a consistent permitting and enforcement posture with respect to these activities.

The general permit regulations of the ARSD, § 74:52:02:46 provide for the issuance of general permits where covered facilities:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of waste;
3. Require the same effluent limitations, operating conditions, or standards;
4. Require the same or similar monitoring; and
5. Are more appropriately controlled under a general permit.

DISCHARGE DESCRIPTION

Construction Dewatering:

During construction activity, dewatering of the excavation site is often necessary. The presence of water in the excavation is normally the result of either groundwater intrusion or runoff from a precipitation event accumulating in the excavated area. Removal of this water from the construction site is often critical to the operation of equipment and the integrity of the structure being constructed.

This permit covers the operation of *temporary dewatering* without any distinction as to whether the dewatering is for the foundation of a building, a dam, trenching for a pipeline, etc. The principal pollutant of concern is total suspended solids because of erosional effects or improper pumping procedures. In addition, there exists some potential for oil and grease in the discharge from the pumping systems. The permit limits the level of oil and grease that will be allowed in the discharge. The South Dakota Department of Environment and Natural Resources (SDDENR) reviews each request for coverage before authorizing the discharge under this permit to identify any exceptional situations where an individual permit may be needed.

Hydrostatic Testing:

Pipeline and/or vessel installations must occasionally be tested for leakage before placing them in operation. Water is generally used to hydrostatically test the system and is the only test medium that is allowed to be discharged under this permit.

The sources of hydrostatic testing water may be surface, ground, or well water. In general, nothing is added to the raw water used for the test. The test water could possibly be contaminated from residual materials or fluids in the pipe or vessel. Consideration of the potential for such contamination must be made for each test and will be assessed during the review of the information submitted with the original request for discharge authorization. It is unlikely that virgin pipe (the most common subject of hydrostatic tests) would pose any problem.

Disinfection and flushing of potable water lines:

Potable water lines may need to be flushed and/or disinfected after initial construction, after maintenance, or occasionally for other reasons. These lines can vary in size from a small section of a neighborhood water main to a large section of a rural water distribution system.

The principal pollutant of concern from the disinfection of water lines would be the disinfectant (usually chlorine or chloramines) used. These disinfectants can be toxic to aquatic life. Therefore, the concentrations of these disinfectants must be non-detectible in the discharge by the time it reaches waters of the state. Flushing of potable water lines can also result in the release of suspended solids in the discharge.

Pump testing of water wells:
Testing of wells is sometimes needed to determine the ability of the well to meet the required flow rates and water quality. Testing may also be required to determine the impacts of the well on the aquifer. This testing can result in a large amount of water being discharged, which could lead to significant erosion. The pollutant of concern would be suspended solids due to the erosion. In some cases, there may be other naturally occurring pollutants in the water that will be regulated by this permit on a case by case basis.

Swimming pools and similar structures:
Swimming pools, hot tubs, spas, and similar structures such as water slides and water amusement parks periodically discharge water due to draining, cleaning, and filter backwash. This water can contain chlorine in amounts high enough to be toxic to aquatic life. Therefore, the total residual chlorine concentration in this discharge must be non-detectible by the time it reaches waters of the state.

Petroleum contaminated groundwater:
Groundwater can become contaminated by leaks from gasoline or diesel storage tanks. These can be either above ground or underground tanks. This permit will regulate discharges of water from the remediation of this contamination. The pollutants of concern in these discharges could include benzene, toluene, ethyl benzene, zylene, and other petroleum hydrocarbons.

Other short-term discharges:
There are potentially many other activities that could result in the need for a temporary discharge. These activities may be eligible for coverage under this general permit providing the following conditions are met:

1. The general permit limits, monitoring and reporting requirements, and management practices are appropriate;

2. The discharge is of a temporary nature; and

3. The discharge consists of relatively uncontaminated water.

When a request for coverage is received, SDDENR shall determine if the discharge meets the above criteria. If there is a potential for the discharge to contain pollutants other than those limited in the permit, SDDENR may require the discharger to demonstrate that the pollutants in question are not present in order to receive coverage under this permit. This can be accomplished by sampling the water to be discharged, analyzing it for the pollutants in question, and comparing the results with method detection levels for that parameter according to approved methods. The permittee may be required to periodically reaffirm the absence of potential pollutants during the period of coverage. If it is shown that significant pollutants other than those limited by this permit are present, coverage under this permit shall be automatically terminated.

COVERAGE UNDER THE PERMIT

Inclusion of the above-described activities under a single SWD General Permit appears to be a reasonable approach in regulating these related discharges. The characteristics of the discharged water from these activities are similar because they discharge the same types of wastes, involve similar operations, are temporary in nature, and are appropriately controlled by the similar effluent limits. Therefore, SDDENR has determined that these activities will be more appropriately controlled under a general permit rather than individual permits.

If new source performance standards (NSPS) are promulgated for any of the listed situations, any facility meeting the definition of a *new source,* as defined in the ARSD, §74:52:01:01, shall be evaluated to determine whether it can be authorized to discharge under this permit or be required to apply for an individual SWD permit if a discharge is required.

In addition to obtaining coverage under this permit, a temporary water use permit is often required when water is pumped from groundwater or other natural sources. In order to aid the permittee in obtaining the appropriate permits in a timely and efficient manner, information required to receive a temporary water use permit is contained in the Notice of Intent form, and will be forwarded to the Water Rights Program for their use. The submittal of this form shall be considered an application for a temporary water use permit (if necessary) as well as the temporary discharge permit.

EFFLUENT LIMITS

1. Total Suspended Solids

   Alternative treatment technologies and BMPs are available to reduce the total suspended solids (TSS) in the discharge. However, the cost effectiveness of using these various technologies and BMPs varies from site to site because of the differences in water and sediment characteristics, duration of the discharge, scope of the project, geography of the site, and other factors. Temporary settling ponds and/or portable treatment units (e.g., filters) have been the most common treatment schemes utilized for TSS control.

   Technology-based limits for most industries are derived assuming that the subject facilities are ongoing operations. Because of the relatively short duration of these temporary discharges, directly comparing TSS levels achieved by industries that are more permanent would not be a sound basis for deriving technology-based effluent limits.

   A facility exercising reasonably diligent control of TSS through the use of a pond system, filtration, or other BMP should be capable of reliably achieving a TSS level of 90 mg/L or less. Effluent guidelines for conventional pollutants do not exist for the categories of point source dischargers covered by this permit. Therefore, the effluent limit for TSS will be 90 mg/L, based on best professional

judgement (BPJ), using the South Dakota Surface Water Quality Standards (SDSWQS) as a guideline. This effluent limit applies to discharges to all waters of the state **except** discharges to waters classified as coldwater permanent fish life propagation waters according to the ARSD §74:51:01:45. For discharges to waters of the state classified as coldwater permanent fish life propagation waters, the effluent limit for TSS, based on the SDSWQS, shall be 53 mg/L.

Because of the variety of available chemical flocculants, the use of such settling aids will be subject to prior approval by the SDDENR.

2. Total Petroleum Hydrocarbons

Total petroleum hydrocarbons (TPH) may be present in the discharge due to pump lubricant contamination, contaminated groundwater, or contaminated runoff entering the discharge. ARSD §74:51:01:10 limits TPH discharges to 10 mg/L for all surface waters, with the exception of waters classified as domestic water supplies. TPH discharges to waters with this classification are limited to 1 mg/L. A limit of 10 mg/L for TPH is therefore recommended based on the SDSWQS and BPJ, since this level can generally be attained by conventional oil skimming methods or a submerged overflow. However, for discharges to waters classified as domestic water supplies, the TPH limit shall be 1 mg/L, based on the SDSWQS.

3. BTEX

The total BTEX concentration shall not exceed 100 µg/L. BTEX shall be measured as the sum of benzene, ethyl benzene, toluene, and zylene. The benzene concentration shall not exceed 5 µg/L. These limits are based on EPA guidance for discharges of wastewater from petroleum contaminated ground water remediation sites and BPJ.

4. pH

The effluent limits for pH will depend on the classification of the receiving stream according to the ARSD Chapter 74:51:03. The following table summarizes pH limits, which are based on the beneficial uses criteria for waters of each respective classification and previous permit limits.

Receiving water classification	Effluent pH limit
Coldwater permanent fish life propagation	6.6-8.6
Coldwater marginal fish life propagation	6.5-8.8
All waters except those classified above	6.5-9.0

5. Total Residual Chlorine

The total residual chlorine concentration must be non-detectable at the point the discharge reaches the receiving waters. SDDENR considers the analytical detection limit for total residual chlorine to be 0.05 mg/L. Any sample results less

than 0.05 mg/L will be considered non-detectable. This can be verified by monitoring at any of the following locations:

- at the point where the discharge reaches the receiving water;
- at the discharge location; or
- at a location between these two points.

This limit is based on BPJ.

6. Wastewaters
There shall be no discharge of process generated wastewater except wastewater resulting from the temporary activities described in the Notice of Intent Form and approved by the department in the authorization letter.

There shall be no discharge of sanitary wastewater from toilets or related facilities. This limit is based on BPJ as this permit is for the discharge of relatively uncontaminated water. The permit does not have limits for parameters such as BOD, fecal coliform, and ammonia.

7. Toxics
There shall be no discharge of toxic pollutants in toxic amounts. This limit is based on the SDSWQS (ARSD § 74:51:01:55).

8. Floating Solids
There shall be no discharge of floating solids or visible foam in other than trace amounts. This limit is based on the SDSWQS (ARSD § 74:51:01:06).

9. Sludges
There shall be no direct discharge of any solids and/or sludges generated by the treatment of the discharge. These limits are based on the ARSD, § 74:51:01:06.

10. Erosion
The permittee shall take all reasonable measures to prevent or minimize the possibility of stream channel scouring or erosion caused by the discharge with the implementation of recognized BMPs. Some examples of BMPs are included in Attachment A.

MANAGEMENT REQUIREMENTS

To ensure the department can maintain a basic permittee information file, the permit will require that a facility wishing to discharge under the conditions of the permit must first supply SDDENR with notice of its intent to be covered by the general permit. To fulfill this requirement, the permittee must complete and submit the Notice of Intent (NOI) and Certification of Applicant form located in Attachment B to SDDENR. SDDENR then makes the decision to grant or deny discharge authority, or request any additional information. Each person receiving coverage under this permit will be issued a cover

letter granting coverage and a copy of the permit with the limits specific to their location identified.

Monitoring is required of each activity that will result in a discharge to waters of the state. The following table shows the sample type and frequency for various parameters for temporary discharge activities.

Parameter	Sample Frequency[1]	Sample Type
Flow Rate (gpm)	Daily	Measure or Estimate
Total Flow Volume (gallons)	Monthly	Measure or Calculate
pH (s.u.)	Weekly	Instantaneous
TPH (mg/L)	Daily	Visual/Grab[2]
Total Suspended Solids[3] (mg/L)	Weekly	Grab
Benzene[4] (µg/L)	Weekly	Grab
Total BTEX (µg/L)	Weekly	Grab
Total Residual Chlorine[5] (mg/L)	Daily	Grab

[1] If the duration of the discharge is shorter than the required sample frequency, a minimum of one sample shall be taken for all parameters.

[2] TPH shall be visually monitored daily. A TPH sample shall be taken during the first day of the discharge and if a visual sheen is observed.

[3] In lieu of sampling for this parameter, the secretary may allow the facility to implement a pollution prevention plan that includes best management practices to prevent total suspended solids from entering the waters of the state.

[4] Benzene and BTEX monitoring is only required if petroleum contamination is possible in the water being discharged. This monitoring will be required by the department on a case by case basis.

[5] Residual chlorine monitoring is only required if the water being discharged has been chlorinated.

Effluent monitoring results shall be summarized for each month and recorded on separate Discharge Monitoring Report forms (DMRs) and submitted to SDDENR monthly. If no discharge occurs during a month, it shall be stated as such on the DMR. The permittee will be required to maintain its records for a minimum of three years. Such records will be subject to inspection by SDDENR and EPA.

DMRs shall be filled out and submitted for the duration of permit coverage. Once the temporary discharge activities cease, the permittee shall submit a completed Notice of Termination Form, located in Attachment A. Once this form is received by the department, the permittee is no longer subject to the requirements of the permit, and coverage is terminated. However, this shall not relieve the permittee from maintaining the required records for discharges that occurred while the permittee was covered under the permit.

Pipe failure shall be considered an unauthorized discharge subject to the notification requirements of this permit.

Authorizations under this general permit are made pursuant to the South Dakota Water Pollution Control Act. This permit does not constitute any authorization under Section 404 of the Federal Clean Water Act, which might be necessary for the discharge of fill material during construction.

POLLUTION PREVENTION PLAN

Instead of monitoring for total suspended solids, the permittee may request to develop and implement a pollution prevention plan before beginning the temporary discharge activities. The plan must detail the best management practices the permittee will undertake to reduce or eliminate any discharge of pollutants. The following table lists some examples of best management practices applicable to temporary discharge activities.

Best Management Practice	Description of Practice
Filter Berm	• A temporary ridge of gravel or crushed rock. • Retains sediment on-site by retarding and filtering runoff while allowing water to be discharged from the site.
Vegetative Buffer	• An area of growing vegetation between the discharge and the receiving waters. • Filters runoff and minimizes erosion.
Filter Fence	• A low fence made of filter cloth and fencing material. • Filters runoff water before discharge.
Sediment Pond	• Small ponding area either diked or excavated. • Allows the sediment to settle out before discharge.

If a pollution prevention plan is developed, the permittee must still visually monitor for TPH. If a sheen is detected, a sample must be immediately taken and analyzed for TPH. Flow records must also be kept and chlorine, benzene, and BTEX monitoring must still be performed, if required. If any permit violation is suspected, a sample must be taken.

REPRESENTATIVE OUTFALLS

A permittee may have more than one outfall at a particular site, or have several sites in the same geographical area. To avoid excessive sampling and monitoring requirements, the permittee may request that representative outfalls cover activities at similar sites. In this way, sampling would only have to be performed at selected outfalls, and other outfalls could be considered similar in quality and nature, without sampling. In requesting this allowance, the permittee must provide documentation showing that the activities are similar or identical, and that discharges from these activities will be similar in quality and nature. The justification for including this allowance is based on BPJ.

REQUIRING AN INDIVIDUAL SWD PERMIT

In accordance with ARSD § 74:52:02:47, the secretary may require any owner or operator covered under the general permit to apply for an individual SWD permit for any of the following reasons:

1. The discharge is a significant contributor of pollution to waters of the state or it presents a health hazard;

2. The discharge is not in compliance with the conditions of the permit;

3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

4. Effluent limitation guidelines are promulgated for point sources covered by this general permit;

5. A water quality management plan containing requirements applicable to such point sources is approved; or

6. Conditions or standards have changed so that the discharge no longer qualifies for the general permit.

In addition, an owner or operator covered by this general permit may apply for an individual SWD permit pursuant to the provisions in the ARSD, § 74:52:02:46.

DRAINAGE ISSUES

The county in which the discharge will occur has the authority to regulate drainage. The permittee is responsible for obtaining any necessary drainage permits from the respective county prior to discharging, if applicable.

ANTIDEGRADATION REVIEW

Antidegradation will not apply to this general permit due to the temporary nature of the discharge, the expected limited impact of the discharge, and the requirement that discharges do not contain toxic pollutants.

TERMINATION OF COVERAGE

When the temporary discharge activities are complete, the permittee is required to submit a Notice of Termination to SDDENR. The Notice of Termination indicates that all temporary discharge activities have ended.

ENDANGERED SPECIES

This is a renewal of an existing general permit. Due to the nature of the pollutants in discharges allowed by this permit and the temporary nature of the discharges, no listed endangered species are expected to be affected by activities related to this permit.

PERMIT EXPIRATION

A five-year permit is recommended.

CONTACT

Any questions pertaining to this statement of basis can be directed to Albert Spangler, Natural Resources Project Engineer for the Surface Water Quality Program at (605) 773-3351.

February 1, 2005

ATTACHMENT A

Construction Site Best Management Practices (BMPs)

BEST MANAGEMENT PRACTICE	USES
Block and Gravel Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet
Buffer Zones	• Floodplains, next to wetlands, along stream banks, and on steep, unstable slopes
Check Dams	• Across swales or drainage ditches to reduce the velocity of flow
Dust Control	• Used where open dry areas of soil are anticipated on the site
Drainage Swale or Earth Dike	• Divert upslope flows from disturbed areas and to divert runoff to a stabilized outlet • To reduce the length of slope the runoff will cross • At the perimeter of the construction site to prevent sediment-laden runoff from leaving the site • To direct sediment-laden runoff to a sediment trapping device
Excavated Gravel Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet • Where ponds around the inlet structure could be a problem to traffic on site
Filter Fabric Inlet Protection	• Used in small drainage areas before the area has been permanently stabilized • Where there is danger of silting in an inlet
Geotextiles	• Stabilize the flow on channels and swales • Used on recently planted slopes to protect seedlings until they become established
Mulching	• Areas where slopes are steeper than 2:1 • Where runoff is flowing across the area • When seedings need protection from bad weather
Permanent Seeding and Planting	• Areas where soils are unstable because of their texture, structure, water table, winds, or slopes • Filter strips, buffer areas, vegetated swales, steep slopes, and stream banks

Pipe Slope Drain	• On slopes before permanent storm water drainage structures have been installed • Where diversion measures have been used to concentrate flows • On any slope where concentrated runoff crossing the face of the slope may cause gullies, channel erosion, or saturation of slide-prone soils • As an outlet for a natural drainageway
Silt Fence	• Immediately upstream of the point(s) of runoff discharge from a site before flow becomes concentrated • Below disturbed areas where runoff may occur in the form of overland flow
Stabilized Construction Entrance	• Wherever vehicles are leaving a construction site and enter onto a public road • At any unpaved entrance/exit where there is risk of transporting mud or sediment onto paved roads
Temporary Sediment Trap	• At the outlet of the perimeter controls installed during the first stage of construction • At the outlet of any structure which concentrates sediment-laden runoff, e.g. at the discharge point of diversions, channels, slope drains, or other runoff conveyances • Above a storm water inlet that is in line to receive sediment-laden runoff
Temporary Seeding	• Areas which have been disturbed by construction and which are likely to be redisturbed, e.g. denuded areas, soil stockpiles, dikes, dams, sides of sediment basins, and temporary roadbanks

Information obtained from the Environmental Protection Agency's ***"Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices"*** *(September 1992).*

ATTACHMENT B

Permit No.: SDG0700000

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181

AUTHORIZATION TO DISCHARGE UNDER THE

SURFACE WATER DISCHARGE SYSTEM

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Chapters 74:52:01 through 74:52:11,

the permittee

is authorized to discharge from the **temporary discharge activities described in the permittee's Notice of Intent form**

to **waters of the state identified in the permittee's Notice of Intent form**

in accordance with discharge point(s), effluent limits, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective **June 01, 2005.**

This permit and the authorization to discharge shall expire at midnight, **May 31, 2010.**

Signed this 1st day of June 2005.

Steven M. Pirner
Secretary
Department of Environment and Natural Resources

TABLE OF CONTENTS

DEFINITIONS

30-day (and monthly) average means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

7-day (and weekly) average means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

ARSD means the Administrative Rules of South Dakota.

An **Authorized Release** is a discharge from a permitted outfall that meets all permit conditions and effluent limits.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storage.

BOD_5 means Five-Day Biochemical Oxygen Demand. BOD is a measurement of the amount of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a sample.

BTEX means the sum of the concentrations of benzene, ethyl benzene, toluene, and zylene.

A **Bypass** is the intentional diversion of waste streams from any portion of a treatment facility.

Composite samples shall be flow proportioned. The composite sample shall contain at least four samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;

b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;

c. Constant sample volume, time interval between samples proportional to flow (i.e. sample taken every “X” gallons of flow); and

d. Continuous collection of sample, with sample collection rate proportional to flow rate.

Daily Maximum (Daily Max.) is the maximum value allowable in any single sample or instantaneous measurement.

Existing Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, which is not considered a New Source.

A **grab** sample, for monitoring requirements, is a single "dip and take" sample collected at a representative point in the discharge stream.

An **instantaneous** measurement, for monitoring requirements, is a single reading, observation, or measurement.

New Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Federal Clean Water Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of (b.) or (c.) of this section but otherwise alters, replaces, or adds to existing process or production equipment. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous onsite construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts of feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

pH is the measure of the hydrogen ion concentration of water or wastewater; expressed as the negative log of the hydrogen ion concentration. A pH of 7 is neutral. A pH less than 7 is acidic, and a pH greater than 7 is basic.

Process Wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

SDDENR means the South Dakota Department of Environment and Natural Resources.

Secretary means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage Sludge is any solid, semi-solid or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.

TSS means **Total Suspended Solids**. TSS is a measure of the filterable solids present in a sample.

An **Unauthorized release** is a discharge from the lower end of the treatment or containment system through a release structure or over or through retention dikes that does not meet all permit conditions or effluent limits.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Acute Toxicity occurs when 50 percent or more mortality is observed for either species (See **Section**) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.

Chronic Toxicity occurs when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see **Section**), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.

IC25 (inhibition concentration) is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organism, such as reproduction or growth.

NOEC (no observed effect concentration) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organism at a specific time of observation. Determined using hypothesis testing.

1.0 COVERAGE UNDER THIS PERMIT

1.1 Applicability of the General Permit

This general permit is potentially applicable to all facilities conducting temporary discharge activities within the State of South Dakota. The water discharged from these activities must be relatively uncontaminated and must not contribute non-conventional or toxic pollutant loadings to the receiving waters.

1.2 Request for Authorization

In order to be considered eligible for authorization to discharge wastewater under the terms and conditions of this permit, the owner, operator, and/or authorized agent of any facility desiring to discharge must complete and submit, a Notice of Intent form and a Certification of Applicant form (located in Appendix A at the end of this permit) at least thirty days prior to the first anticipated date of discharge. This submittal shall also be considered a request for a temporary water use permit, if required.

Such information shall be submitted to the following address:

original to: South Dakota Department of Environment and Natural Resources
Surface Water Quality Program
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181
Telephone: (605) 773-3351

The permit issuing authority shall have up to thirty days after receipt of the Notice of Intent form to request additional data and/or deny the authorization under this general permit for any particular discharge. For existing individually authorized discharges, coverage under the general permit will not be effective unless and until the individual permit is either revoked or inactivated. SDDENR may waive, at its discretion, the thirty-day period.

2.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS

2.1 Effluent Limits

Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

1. There shall be no discharge of any process-generated wastewater except wastewater resulting from activities described in the Notice of Intent Form.

2. There shall be no direct discharge of any solids and/or sludges generated by the treatment of the discharge.

3. There shall be no discharge of sanitary wastewater from toilets or related facilities.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts.

5. There shall be no discharge of toxic pollutants in toxic amounts.

6. No chemical may be added to the discharge unless prior permission for the use of the additive is specifically granted by the SDDENR.

7. The permittee shall take such steps as are necessary to prevent or minimize stream scouring or bank erosion caused by the discharge.

Limits for Total Petroleum Hydrocarbons

8. The concentration of Total Petroleum Hydrocarbons in any single sample shall not exceed 10 mg/L nor shall there be a visible sheen in the discharge. **(for discharges to all waters except those classified as domestic water supplies)**

OR

8. The concentration of Total Petroleum Hydrocarbons in any single sample shall not exceed 1 mg/L nor shall there be a visible sheen in the discharge. **(for discharges to waters classified as domestic water supplies)**

Limits for pH

9. The pH of the discharged water shall not be less than 6.5 standard units nor greater than 9.0 standard units at all times. **(for discharges to all waters except those classified as coldwater fisheries)**

OR

9. The pH of the discharged water shall not be less than 6.5 standard units nor greater than 8.8 standard units at all times. **(for discharges to waters classified as coldwater marginal fish life propagation waters)**

OR

9. The pH of the discharged water shall not be less than 6.6 standard units nor greater than 8.6 standard units at all times. **(for discharges to waters classified as coldwater permanent fish life propagation waters)**

Limits for TSS

10. The Total Suspended Solids concentration shall not exceed 90 mg/L in any single sample. **(for discharges to all waters except those classified as coldwater permanent fish life propagation waters)**

OR

10. The Total Suspended Solids concentration shall not exceed 53 mg/L in any single sample. **(for discharges to waters classified as coldwater permanent fish life propagation waters)**

Limits for potentially petroleum contaminated water

11. The total BTEX concentration shall not exceed 100 µg/L in any single sample. BTEX shall be measured as the sum of benzene, ethyl benzene, toluene, and zylene.

12. The benzene concentration shall not exceed 5 µg/L in any single sample.

Limits for potentially chlorinated water

13. The total residual chlorine concentration shall be non-detectable at the point the discharge enters the receiving waters in all samples. SDDENR considers the analytical detection limit for total residual chlorine to be 0.05 mg/L. Any sample results less than 0.05 mg/L will be considered non-detectable.

2.2 Monitoring and Reporting Requirements

1. Daily logs. The permittee shall maintain a daily log relating to any discharge(s). The log shall contain:

   a. flow information and data;
   b. sample results;
   c. records of visual observations; and
   d. notations of any problems relating to treatment of the discharge.

2. Samples shall be taken as often as necessary to provide representative information as to the nature and volume of the discharge(s). At a minimum, samples of each discharge shall be taken as follows:

Parameter	Sample Frequency[1]	Sample Type[2]
Flow Rate (gpm)	Daily	Measure or Estimate
Total Flow Volume (gallons)	Monthly	Measure or Estimate
pH (s.u.)	Weekly	Instantaneous
TPH (mg/L)	Daily	Visual/Grab[3]
Total Suspended Solids[4] (mg/L)	Weekly	Grab
Benzene[5] (µg/L)	Weekly	Grab
Total BTEX (µg/L)	Weekly	Grab
Total Residual Chlorine[6] (mg/L)	Daily	Grab

[1] If the duration of the discharge is shorter than the required sample frequency, a minimum of one sample shall be taken for all parameters.
[2] See definitions section of permit for definitions.
[3] TPH shall be visually monitored daily. A TPH sample shall be taken during the first day of discharge and if a visual sheen is observed.
[4] In lieu of sampling for this parameter, the secretary may allow the facility to implement a pollution prevention plan that includes best management practices to prevent total suspended solids and other pollutants from entering the waters of the state.
[5] Benzene and BTEX monitoring is only required if petroleum contamination is expected in the water being discharged. This monitoring will be required by the department on a case by case basis.
[6] Residual chlorine monitoring is only required if the water being discharged has been chlorinated.

3. If sampling performed by the permittee indicates a violation, the permittee shall notify SDDENR in accordance with the provisions in **Part 4.8** of this permit. The permittee shall also repeat the sampling and analysis and submit the results of the repeat analysis to the department within thirty days after becoming aware of the violation.

3.0 POLLUTION PREVENTION PLANS

3.1 Deadlines for Plan Preparation and Compliance

If the permittee develops a pollution prevention plan instead of sampling, the plan must be developed and implemented prior to the start of the temporary discharge.

3.2 Contents of the Plan

The plan shall include, at a minimum, the following items:

1. Site Description
   Each plan shall provide a description of pollutant sources and other information as indicated below:

   a. The type of temporary discharge activity;
   b. Estimates of the total volume of water to be discharged;
   c. The name of the receiving waters; and
   d. A Site map indicating:
      (1) Drainage patterns;
      (2) Location of major structural and nonstructural controls identified in the plan;
      (3) Location of areas where stabilization practices are expected to occur;
      (4) Surface waters and extent of wetland acreage; and
      (5) Location of discharge point(s).

2. Best Management Practices
   The plan shall describe appropriate best management practices and when and where they will be implemented for each temporary discharge activity identified in the Notice of Intent.

3. Inspection Requirements
   The permittee shall ensure that qualified personnel inspect the site on a daily basis. The inspection shall include the temporary discharge site, areas where the best management practices are being implemented, and the discharge location. These areas shall be inspected to ensure that the best management practices are operating correctly and for evidence of, or the potential for, pollutants entering the receiving waters. If any pollutants are suspected of being discharged, a sample must be taken for those parameters listed in **part 2.2** of this permit.

   The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

   a. Date and time of the inspection;
   b. Name of the inspector(s);
   c. Identification of operational problems and/or maintenance problems;
   d. Recommendations, as appropriate, to remedy identified problems;
   e. A brief description of any actions taken with regard to problems identified; and
   f. Other information, as appropriate.

   The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

3.3 Signature and Plan Review

1. The plan shall be signed in accordance with the signatory requirements and retained at the site where the temporary discharge is occurring.

2. The permittee shall make plans available upon request to the Secretary and in the case of a discharge through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Secretary may notify the permittee at any time that the plan does not meet the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements. Within seven days of notification, the permittee shall make the required changes to the plan and shall submit to the Secretary a written certification that the requested changes have been made.

3.4 Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan proves to be ineffective in eliminating or significantly minimizing pollutants present in the temporary discharge.

4.0 MONITORING, RECORDING AND REPORTING REQUIREMENTS

4.1 Representative Sampling

Samples taken in compliance with the monitoring requirements established under **Part 2.2** shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

4.2 Monitoring Procedures

Monitoring must be conducted according to test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.

4.3 Reporting of Monitoring Results

Effluent monitoring results obtained during the previous month shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the **Signatory Requirements** (see Part 4.14), and submitted to the Secretary at the following address:

original to: South Dakota Department of
Environment and Natural Resources
Surface Water Quality Program
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501-3181

4.4 Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

4.5 Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

4.6 Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The initials or name(s) of the individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The time analyses were initiated;

5. The initials or name(s) of individual(s) who performed the analyses;

6. References and written procedures, when available, for the analytical techniques or methods used; and,

7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4.7 Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of activity at the permitted location.

4.8 Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the State of South Dakota at (605) 773-3231 and the EPA, Region VIII, Emergency Response Branch at (303) 293-1788.

2. The following occurrences of noncompliance shall be reported by telephone to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. – 5:00 p.m. Central Time) following the day the permittee became aware of the circumstances:

    a. Any unanticipated bypass which exceeds any effluent limit in the permit (See **Part 5.7 – Bypass of Treatment Facilities**);

    b. Any upset which exceeds any effluent limit in the permit (See **Part 5.8 – Upset Conditions**); or

    c. Violation of a maximum daily discharge limit for any of the pollutants listed in the permit to be reported within 24 hours.

3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and,

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.

5. Reports shall be submitted to the addresses in **Part 4.3 – Reporting of Monitoring Results**.

4.9 Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for **Part 4.3** are submitted. The reports shall contain the information listed in **Part 4.8.3**.

4.10 Changes in Discharge of Toxic Substances

Notification shall be provided to the Secretary as soon as the permittee knows of, or has reason to believe that any activity has occurred or will occur which would result in the discharge of a toxic pollutant, as defined in ARSD 74:52:01:01, which is not limited in the permit and if that discharge will exceed the highest of the following notification levels:

1. One hundred micrograms per liter (100 μg/L);

2. Two hundred micrograms per liter (200 μg/L) for acrolein and acrylonitrile;

3. Five hundred micrograms per liter (500 μg/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol;

4. One milligram per liter (1 mg/L) for antimony; or

5. Five (5) times the maximum concentration value reported for that pollutant in the permit application.

4.11 Planned Changes

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limits in the permit. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source (see ARSD, Chapter 74:52:01:01(30)).

4.12 Duty to Provide Information

The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

4.13 Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Secretary, it shall promptly submit such facts or information.

4.14 Signatory Requirements

All applications, reports or information submitted to the Secretary shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer;

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

   c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Secretary shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Secretary; and,

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph 2 of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph 2 of this section must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5.0 COMPLIANCE RESPONSIBILITIES

5.1 Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the

director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

5.2 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5.3 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

5.4 Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

5.5 Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digestor supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the State.

5.6 Inspection and Entry

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

5.7 Bypass of Treatment Facilities

1. Bypass not exceeding limits. The permittee may allow any bypass to occur which does not cause effluent limits to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

   a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.

   b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under **Part 4.8 – Twenty-four Hour Notice of Noncompliance Reporting**.

3. Prohibition of bypass.

a. Bypass is prohibited and the Secretary may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(3) The permittee submitted notices as required under paragraph 2. of this section.

b. The Secretary may approve an anticipated bypass, after considering its adverse effects, if the Secretary determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

5.8 Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under **Part 4.8** – **Twenty-four Hour Notice of Noncompliance Reporting**; and

d. The permittee complied with any remedial measures required under **Part 5.2 – Duty to Mitigate**.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5.9 Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Federal Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5.10 Anticipated Noncompliance

The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

5.11 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5.12 Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

5.13 Availability of Reports

Except for data determined to be confidential under ARSD 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of SDDENR and EPA. Permit applications, permits and effluent data shall not be considered confidential.

5.14 Property Rights

The Secretary's issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severally liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

5.15 Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

5.16 Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,

3. The Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.

5.17 Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

2. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.

3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.

6.0 PENALTIES FOR NONCOMPLIANCE

6.1 Penalties for Violations of Permit Conditions

Any person who violates a permit condition shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state. Except as provided in permit conditions on **Part 5.7** – **Bypass of Treatment Facilities** and **Part 5.8 – Upset Conditions**, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

6.2 Penalties for Tampering

Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

6.3 Penalties for Falsification of Reports

Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state, or both.

6.4 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Federal Clean Water Act.